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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CRAIG RICHARD CHANDLER,

Defendant and Appellant.

H046629

(Santa Clara County
Super. Ct. No. C1223754)

Defendant appeals from an order denying his motion to waive or modify his \$10,000 restitution fine imposed pursuant to Penal Code section 1202.4, subdivision (b).¹ Pursuant to *People v. Serrano* (2012) 211 Cal.App.4th 496 (*Serrano*), we conclude that defendant has failed to raise an arguable issue on appeal and dismiss his appeal.

On August 1, 2013, a jury convicted defendant of five counts of committing a lewd and lascivious act on a child under the age of 14 (§ 288, subd. (a)), further finding he committed the acts against more than one child. (§ 667.61, subd. (b), (e).)² The trial court sentenced defendant to five consecutive terms of 15 years to life and ordered him to pay a restitution fine of \$10,000 pursuant to section 1202.4, subdivision (b). The defendant appealed the judgment. While his direct appeal was pending in this court,

¹ All further unspecified statutory references are to the Penal Code.

² Defendant's request that this court take judicial notice of our unpublished opinion in his prior appeal, *People v. Chandler* (Nov. 30, 2019, H040429) [nonpub. opn.], filed November 30, 2015, is granted.

defendant filed a petition for writ of habeas corpus in the trial court challenging the trial court's \$10,000 restitution fine. The trial court denied defendant's habeas corpus petition, noting his claim should have been raised, if at all, in his direct appeal, then pending. On November 30, 2015, this court affirmed the judgment and remanded the matter to correct a few clerical errors in the abstract of judgment.

On November 16, 2018, defendant filed a motion in the trial court to waive or modify his \$10,000 restitution fine, claiming the trial court unlawfully imposed that fine without considering his ability to pay it. The trial court denied appellant's motion on December 14, 2018, finding that it lacked jurisdiction to modify the judgment, that even if it had jurisdiction his claim was forfeited, untimely and lacked merit. Defendant timely appealed this order.

We appointed counsel to represent defendant in this court. Appointed counsel filed an opening brief pursuant to *Serrano, supra*, 211 Cal.App.4th 496, which states the case and the facts but raises no specific issues. Pursuant to *Serrano*, on April 29, 2019, we notified defendant of his right to submit written argument in his own behalf within 30 days. On May 10, 2019, we received a supplemental brief from defendant. In his supplemental brief defendant lists a number of complaints about appellate counsel. Defendant states that he asked counsel to obtain a court filing from 2015, that he asked counsel to call him before filing anything with the court, and that he did not authorize counsel to file a *Serrano* brief. Finally, defendant requests that we appoint new counsel on appeal. These contentions do not raise an arguable issue on appeal.

In effect, defendant is making a claim of ineffective assistance of appellate counsel. Ineffective assistance of appellate counsel is not a cognizable argument on appeal. An appellant must raise this claim either in a motion to relieve counsel or in a separate petition for writ of habeas corpus. (See *In re Reno* (2012) 55 Cal.4th 428, 487-488.) For the sake of expediency, we will treat the claim as a motion to relieve counsel and address the argument substantively here.

To show ineffective assistance of counsel, an appellant must show that counsel's performance was deficient, falling below an objective standard of reasonableness, and that appellant was prejudiced thereby. (*Strickland v. Washington*, 466 U.S. 668, 688, 694.) Here, defendant complains that counsel's decision to file a *Serrano* brief "is reprehensible, unethical, and inaccurate." Counsel does not provide ineffective assistance merely by filing a brief pursuant to *Serrano*. In *Serrano*, we recognized that the procedures for filing a brief stating the facts and case, but raising no arguable issue on appeal, set forth by the California Supreme Court in *People v. Wende* (1979) 25 Cal.3d 436, and approved by the United States Supreme Court in *Smith v. Robbins* (2000) 528 U.S. 259, 276, satisfy a counsel's ethical duties to his client and to the court. (*Serrano*, *supra*, 211 Cal.App.4th at p. 500.) Counsel also has an ethical duty to raise only arguable issues. Counsel correctly determined that there were none here. Under these circumstances, counsel satisfied his ethical duty by filing the *Serrano* brief.

Defendant also claims that counsel failed to obtain additional records and did not communicate with defendant by phone. The fact that appellate counsel failed to discuss alternatives with defendant on the phone or to obtain his permission prior to filing the *Serrano* brief, does not support a claim for ineffective assistance of counsel. Even if these claims of deficient performance were supported by the record on appeal, defendant has not shown that the 2015 records or a phone call would have revealed an arguable issue on appeal. Therefore, defendant cannot show any prejudice. Appellant having failed to establish ineffective assistance of counsel, the request to appoint new appellate counsel is denied.

As nothing in defendant's supplemental brief raises an arguable issue on appeal, we must dismiss it. (*Serrano*, *supra*, 211 Cal.App.4th at pp. 503-504.)

DISPOSITION

The appeal is dismissed.

ELIA, J.

WE CONCUR:

GREENWOOD, P. J.

PREMO, J.